

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Power Company :
 :
 Application for an order :
 determining that prior approval :
 of a common stock repurchase :
 program is not required under : 94-0518
 Section 7-101 of the Public :
 Utilities Act, or in the :
 alternative consenting to and :
 approving the common stock :
 repurchase program. :

ORDER

By the Commission:

On December 30, 1994, Illinois Power Company ("Illinois Power", "Company" or "IP") filed a verified petition requesting an order determining that prior approval of the Illinois Commerce Commission ("Commission") for a program of repurchases of IP's common stock from its parent company, Illinova Corporation ("Illinova") is not required under Section 7-101 of the Public Utilities Act ("Act"), 220 ILCS 5/7-101; or, in the alternative, consenting to and approving the common stock repurchase program. Attached to the petition were the affidavits of Larry F. Altenbaumer, Senior Vice President and Chief Financial Officer of Illinois Power; Alec G. Dreyer, Treasurer and Controller of Illinois Power; and John W. Dillon, a partner in the public accounting firm of Price Waterhouse LLP. On February 6, 1995, Illinois Power filed a Motion to Modify and Supplement Petition in which it withdrew its request for an order determining that Commission approval of the common stock repurchase program under Section 7-101 was not required, and submitted a supplemental affidavit of Mr. Altenbaumer. The Motion to Modify and Supplement Petition is reasonable and is hereby granted.

On February 8, 1995, the Staff of the Commission ("Staff") filed a Response to Petition setting forth Staff's position as to the action which should be taken by the Commission concerning IP's petition, as more fully described in Section III of this Order. The Staff Response states that Section 7-101 does not require a hearing on IP's petition and that Staff does not recommend that a hearing be held.

No petitions to intervene were filed, and IP waived the necessity for a hearing.

On March 6, 1995, Staff filed a Supplemental Response to Petition concerning certain cash transfers from IP to Illinova which occurred in 1994. Illinois Power responded on March 8, 1995, and Staff replied on March 13, 1995. These pleadings are summarized in Section V of this Order.

I. ILLINOIS POWER'S PETITION

Illinois Power's petition states that IP is a subsidiary of Illinova, which owns 100% of IP's common stock. Illinova is a holding company which also owns 100% of several other corporations. Illinova was formed after the Commission, in its order in Docket No. 92-0404 issued on November 9, 1993, ordered IP to expeditiously form a holding company. In that order, the Commission also authorized IP to invest up to \$75 million in IP Group, Inc., a subsidiary of IP, with no more than \$25 million of the investment to occur in the first 12 months following the date of the order. Following formation of Illinova, both IP and IP Group, now Illinova Generating Company ("IG"), became subsidiaries of Illinova. At December 31, 1994, there were 75,643,937 shares of IP common stock, all of which are owned by Illinova. IP common stock, therefore, is not publicly traded. Illinova common stock is publicly traded. At December 31, 1994, IP had common stock outstanding of \$1,424,600,000, and retained earnings of \$38,800,000.

The petition states that Illinois Power proposes to engage in a program of periodic repurchases of shares of its common stock from Illinova. The repurchases will be made at prices which Illinois Power management determines to be equivalent to the market price at which IP common stock would trade if the stock were publicly held and traded. Illinois Power will determine the market price at which IP common stock would have traded at the time of a repurchase transaction, were the stock publicly held and traded, by subtracting the book value per share of IG common stock from the current market price of Illinova common stock. IG is currently the only major active subsidiary of Illinova other than IP and therefore is the only other entity affecting the market value of Illinova common stock. IP's petition states that the figure resulting from subtracting the book value per share of IG common stock from the market price of Illinova common stock best represents the market price at which IP common stock could trade if the stock were publicly held and traded. The petition states that as and when other subsidiaries of Illinova become active business entities, the book value per share of those subsidiaries will be incorporated into the calculation of the market price of IP common stock for purposes of determining the price at which the Company will repurchase that stock.

The petition states that by only repurchasing shares of its common stock from Illinova at a price which is determined to be

equivalent to the market price at which Illinois Power common stock would trade if it were publicly traded, the Company will pay no more to repurchase the common stock than if the repurchase were being made from an unaffiliated third party.

Illinois Power's petition recites that the amount of each individual common stock repurchase will be determined by IP's Board of Directors based on its business judgment that the transaction is financially prudent in light of IP's financial condition at that time. Through the repurchase of shares of its common stock, IP will provide funds to its shareholder, which will then be able to use those funds for activities that will, in the shareholder's business judgment, maximize its return opportunities. The petition states that provision of funds to the shareholder for these purposes through repurchases of IP common stock is preferable to declaration and payment of additional or extraordinary dividends on common stock. The petition notes that in Docket No. 92-0404, Staff recognized that common stock repurchases by a subsidiary from its parent are an alternative to dividend payments to the parent. The petition also states that IP's repurchase of its common shares will not affect the Company's retained earnings balance, except in certain limited circumstances, and thus will enable IP to continue to rebuild its retained earnings balance while providing funds to its stockholder for investment purposes.

The petition states that IP will repurchase shares of its common stock only if the applicable requirements of the Business Corporation Act (805 ILCS 5/1.01 et seq.) are met. The petition also sets forth the accounting entries to be recorded on IP's books for each common stock repurchase transaction in accordance with the Uniform System of Accounts, as follows:

- (a) The reacquired shares will initially be held by Illinois Power as treasury stock. The amount paid by Illinois Power to reacquire the shares will be credited to Account 131, Cash, of the Uniform System of Accounts, and debited to Account 217, Reacquired Capital Stock.
- (b) Thereafter, the reacquired shares may, by vote of IP's Board, be cancelled. Should this step be taken, the balance in Account 217, Reacquired Capital Stock, will be reduced by the reacquisition cost of the cancelled shares; and the balances in Account 201, Common Stock Issued, Account 207, Premium on Capital Stock, Account 213, Discount on Capital Stock, and Account 214, Capital Stock Expense, will be reduced by the stated or par value, premium or discount, and expense, respectively, associated with the reacquired shares.

- (c) If the reacquired common shares are subsequently cancelled, then any gain or loss on the reacquisition of the shares (i.e., any difference between the stated value, net of any premium, discount and expense of the reacquired shares over the cost of reacquisition) will be recorded in Account 210, Gain on Resale or Cancellation of Reacquired Common Stock, except that to the extent any loss on reacquisition exceeds the balance in Account 210, it will be recorded in Account 439, Adjustments to Retained Earnings. (Pet., Paragraph 6)

Illinois Power's petition states that IP's program to repurchase shares of its common stock will not result in any adverse impact on IP's financial condition or on its ability to fulfill its obligations to provide safe, adequate and reliable electric and gas utility service to the public, and is reasonable and in the public interest. The petition states that there is no basis to find that IP's program to repurchase shares of its common stock "is not in the public interest" which is the standard under Section 7-101 of the Act for disapproval of an affiliated interest transaction.

II. SUPPLEMENTAL AFFIDAVIT SUBMITTED BY ILLINOIS POWER

On February 6, 1995, IP submitted the Supplemental Affidavit of Mr. Altenbaumer. In his Supplemental Affidavit, Mr. Altenbaumer states that IP recognizes that its obligation to serve its customers in a reliable, safe and efficient manner is paramount. He states that the cash which will be available to IP for use in making common stock repurchases from Illinova is cash which would be available after IP has met its utility operating expenses, construction requirements, and debt service and preferred dividend requirements in a manner consistent with this obligation. He states that so long as IP's ability to provide reliable, safe and efficient utility service is not jeopardized, and IP has sufficient liquidity to satisfy this obligation, the use of available cash in ways that best increase shareholder value should be determined by management in the exercise of its business judgment.

Mr. Altenbaumer states that there are a variety of ways in which available cash could be used by IP to enhance shareholder value. These include paying cash dividends on common stock to the public shareholders of Illinova, recapitalizing or reducing IP's capital structure, or providing cash to Illinova for the purpose of investing in non-regulated activities. He states that no one use of IP's available cash will produce the greatest increase in shareholder value at all times. Management evaluates the specific benefits and risks of each opportunity, including uses of cash for non-regulated activities. Mr. Altenbaumer states that IP's management will not devote available cash to non-regulated

activities if to do so would cause IP to violate its threshold statutory obligation to provide reliable, safe and efficient utility service to the public.

Mr. Altenbaumer describes three primary methods by which IP can provide cash to Illinova. The first method is through day-to-day intercompany operating transfers, which is short-term in nature. The second method is to declare and pay a common stock dividend. Mr. Altenbaumer states that dividend declarations reduce retained earnings, thereby limiting IP's financial flexibility and health. He states that IP anticipates limiting its common stock dividend declarations during the next three to five years to amounts sufficient to fund Illinova's common stock dividends to its shareholders. The third, and preferred, approach is common stock repurchases from Illinova. A common stock repurchase provides cash to Illinova without reducing IP's retained earnings, although both common stock repurchases and common stock dividends do reduce IP's overall common equity component. Dividend declarations and common stock repurchases are both longer term approaches for providing funds to the parent company.

Mr. Altenbaumer states that an approach by which the Commission would have to approve each common stock repurchase on a transaction-by-transaction basis would restrain IP's flexibility and Illinova's ability to timely respond to business opportunities; would be inconsistent with typical business practices among affiliated corporations; and could burden the Commission and Staff with frequent requests for approvals under tight time pressures. IP prefers establishment of an ongoing financial test to be met for individual common stock repurchase transactions whereby IP could implement a common stock repurchase without obtaining separate Commission approval so long as the financial test were satisfied.

Specifically, Mr. Altenbaumer states that in lieu of obtaining separate Commission approval for each common stock repurchase transaction, IP is willing to use the following financial test to determine whether, and in what amounts, it can make common stock repurchases from Illinova:

Unless Illinois Power's first mortgage bonds are rated at least "A2" by Moody's or "A" by Standard & Poor's, the dollar amount of Illinois Power's common stock repurchases from Illinova will not exceed the Company's cumulative free cash flow, as defined below, since December 31, 1994, plus the balance of cash and cash equivalents as reported on Illinois Power's Balance Sheet at December 31, 1994. There will be no limitations on the number of shares which can be repurchased.

Under this test, Illinois Power may make a common stock repurchase from Illinova in an amount that does not exceed the cash and cash equivalents balance as of the end of the preceding calendar year, plus actual free cash flow for the current year accumulated through the end of the most recently-completed quarter, less the amount of any common stock repurchases already executed in the current year, plus the forecasted free cash flow for the remaining quarters of the current calendar year.

"Free cash flow" shall be defined as Illinois Power's net cash flow provided by utility operations, including changes in working capital, less construction expenditures, plus total AFUDC, less common stock and preferred stock dividends, less maturing long-term debt, less scheduled sinking fund payments for preferred stock and long-term debt.

The "cash and cash equivalents balance" at the end of each calendar year shall be calculated as follows: The cash and cash equivalents balance as of the end of the previous calendar year, plus actual free cash flow accumulated through the end of the year, less any common stock repurchases executed during the current year. The cash and cash equivalents balance may become negative at the end of any given year due to errors in forecasting free cash flow, but not in consecutive years.

At the time of any common stock repurchase from Illinova, Illinois Power will submit an informational report to the Commission's Director of Accounting and Director of Finance, showing compliance with the financial test including supporting calculations.

If Illinois Power's first mortgage bonds are rated at least "A2" by Moody's or "A" by Standard & Poor's, compliance with the test will not be necessary and the informational reports will not need to be filed. (Supp. Aff., Paragraph 12)

III. STAFF RESPONSE TO PETITION

In its Response to Petition, Staff recommended that the Commission approve IP's common stock repurchase program. Staff notes that by granting the petition, the Commission will be permitting IP to repurchase its common stock from Illinova at such future times as IP has satisfied the financial test described in the preceding paragraph. Staff recognizes that IP has agreed to comply with the financial test and to submit, at the time of any repurchase, a report showing compliance with that test. Staff

concludes that IP's agreement to comply with the financial test and the Commission's conditioning of its approval of the repurchase program on IP's agreement to comply with the test, will safeguard the public interest as required by Section 7-101. Staff observed that the financial test with which IP has agreed to comply is based on the same free cash flow test which the Commission used in Docket No. 92-0404, in which it approved IP's program to fund its non-regulated subsidiary, IP Group, Inc.

Staff also indicated that it concurred with the Company's proposed accounting treatment for the common stock repurchase transactions, as set forth on page 4 of the petition. Staff recommends that the proposed accounting treatment be adopted.

IV. COMMISSION ANALYSIS AND CONCLUSIONS

Section 7-101 of the Act states in pertinent part:

No management, construction, engineering, supply, financial or similar contract and no contract or arrangement for the purchase, sale, lease or exchange of any property or for the furnishing of any service, property or thing hereafter made with any affiliated interest . . . shall be effective unless it has first been filed with and consented to by the Commission. The Commission may condition such approval in such manner as it may deem necessary to safeguard the public interest. If it be found by the Commission, after investigation and a hearing, that any such contract is not in the public interest, the Commission may disapprove such contract.

Based on the matters set forth in Illinois Power's petition and affidavits, the Commission is of the opinion that IP's program of common stock repurchases from Illinova is reasonable and in the public interest and should be approved, subject to the financial test set forth in Mr. Altenbaumer's Supplemental Affidavit being satisfied with respect to each individual common stock repurchase transaction. The information submitted by Illinois Power indicates that the program to repurchase common stock will not result in any adverse impact on IP's financial condition or on its ability to fulfill its obligations to provide safe, adequate and reliable electric and gas utility service to the public, so long as the financial test is met. Requiring IP to meet the financial test will ensure that IP only transfers to Illinova, through repurchases of common stock, cash which is available after IP has met its utility operating expenses, construction requirements, and debt service and preferred stock and common stock dividend requirements in a manner consistent with its public service obligations.

V. SUPPLEMENTAL PLEADINGS

The Supplemental Staff Response to Petition states that it has come to Staff's attention, through IP responses to Staff inquiries, that IP transferred approximately \$21.5 million in cash to Illinova from June through December of 1994. Staff indicates that these cash transfers occurred on six occasions for various purposes. Staff further states that it has been advised by Illinois Power that Illinova intends to repay IP with the proceeds from IP's repurchase of its common stock for which approval is sought in this proceeding. The response indicates that these cash transfers have resulted in interest charges by IP to Illinova of approximately \$575,070 for the year ending December 31, 1994.

Staff takes the position that the existence of these cash transactions does not affect the merits of IP's prospective stock repurchase program for which approval is sought in this Docket. Furthermore, Staff indicates that the magnitude of the 1994 cash transactions does not appear to raise concern about IP's ability to continue to provide adequate service as long as it follows the free cash flow test adopted herein. Staff is of the opinion that the Commission should be aware of these transactions before it rules on IP's petition herein. Staff contends that these cash transactions should be examined to determine whether they are within the scope of Section 7-101 of the Act, and, if so, whether the Commission should consent to them. Staff recommends that the Commission direct IP, as part of its actions in this proceeding, to bring these issues before the Commission in an appropriate proceeding.

In its Response, Illinois Power agreed with Staff that the 1994 cash transactions do not affect the merits of IP's prospective stock repurchase program, are beyond the relief requested in this Docket, and are not of sufficient magnitude to raise concerns about IP's ability to provide service. Illinois Power disagrees with Staff's recommendation that the Commission order IP to bring the 1994 transactions before the Commission in another proceeding. IP contends that such action is outside the scope of its petition in this Docket and premature.

Illinois Power's Response notes that on May 11, 1994, in Docket No. 94-0005, the Commission approved a Services and Facilities Agreement under Sections 7-101 and 7-102 of the Act for transactions between IP and "IP Holding Company" (now Illinova). That Order imposes certain reporting requirements, and IP notes that it will submit its report for 1994 on the allocation of costs between it and its affiliates to Staff by March 17, 1995. Illinois Power further indicates that it will soon be submitting its initial cost study and related information to Staff. The Company asserts that if Staff believes, following review of the report and discussions with IP, that the 1994 cash transactions are outside

the scope of the Services and Facilities Agreement and within the scope of Section 7-101, then Illinois Power or Staff can bring these issues before the Commission in an appropriate proceeding.

In its Reply, Staff contends that it is not premature for the Commission to direct IP to bring before it the issues relating to the necessity and appropriateness of the approval of the 1994 cash transactions. Staff emphasizes that these transactions have already occurred, and it is not clear to what extent these transactions may be within the scope of the Services and Facilities Agreement approved in Docket No. 94-0005. Staff recommends that the Commission direct IP to bring before it any 1994 transactions which are within the scope of Section 7-101 of the Act. Staff indicates, however, that it is not recommending that such direction be given in the Order in this proceeding.

After reviewing these pleadings, the Commission is of the opinion that the 1994 cash transfers from IP to Illinova warrant examination. The Commission concludes that Staff should further review these transactions and file a report with its findings and recommendations, accompanied by an order initiating a proceeding, if appropriate, to the Commission within 45 days of the date of this Order. In the event that Illinois Power files for approval of these transactions, the Staff Report will not be required.

VI. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having reviewed the verified petition, the affidavits submitted by Illinois Power, and the Staff Response and being fully advised in the premises, is of the opinion and finds that:

- (1) Illinois Power Company is an Illinois corporation which is engaged in the generation, distribution and sale of electricity, and the transportation, distribution and sale of natural gas, at retail to the public in Illinois, and is a public utility as defined in Section 3-105 of the Public Utilities Act;
- (2) Illinois Power and Illinova Corporation are affiliated interests as defined in Section 7-101 of the Act;
- (3) the Commission has jurisdiction of Illinois Power and of the subject matter herein;
- (4) the recitals of fact and conclusions reached in the prefatory portion of this Order are supported by

the record and are hereby adopted as findings of fact;

- (5) consent and approval of the Commission should be granted for a program of repurchases by Illinois Power of its common stock from Illinova, as more fully described in Section I of this Order, provided that the following provisions are satisfied with respect to each common stock repurchase transaction:

Unless Illinois Power's first mortgage bonds are rated at least "A2" by Moody's, or "A" by Standard & Poor's, the dollar amount of Illinois Power's common stock repurchases from Illinova will not exceed the Company's cumulative free cash flow, as defined below, since December 31, 1994, plus the balance of cash and cash equivalents as reported on Illinois Power's Balance Sheet at December 31, 1994. There will be no limitations on the number of shares which can be repurchased.

Under this test, Illinois Power may make a common stock repurchase from Illinova in an amount that does not exceed the cash and cash equivalents balance as of the end of the preceding calendar year, plus actual free cash flow for the current year accumulated through the end of the most recently-completed quarter, less the amount of any common stock repurchases already executed in the current year, plus the forecasted free cash flow for the remaining quarters of the current calendar year.

"Free cash flow" shall be defined as Illinois Power's net cash flow provided by utility operations, including changes in working capital, less construction expenditures, plus total AFUDC, less common stock and preferred stock dividends, less maturing long-term debt, less scheduled sinking fund payments for preferred stock and long-term debt.

The "cash and cash equivalents balance" at the end of each calendar year shall be calculated as follows: The cash and cash equivalents balance as of the end of the previous calendar year, plus actual free cash

flow accumulated through the end of the year, less any common stock repurchases executed during the current year. The cash and cash equivalents balance may become negative at the end of any given year due to errors in forecasting free cash flow, but not in consecutive years.

At the time of any common stock repurchase from Illinova, Illinois Power will submit an informational report to the Commission's Director of Accounting and Director of Finance, showing compliance with the financial test including supporting calculations.

If Illinois Power's first mortgage bonds are rated at least "A2" by Moody's or "A" by Standard & Poor's, compliance with the test will not be necessary and the informational reports will not need to be filed.

- (6) the proposed accounting treatment for the common stock repurchase transactions on Illinois Power's books, as set forth in paragraph 6 of the petition and in Section I of this Order, is reasonable and should be approved.
- (7) Staff is directed to review the 1994 cash transfers from IP to Illinova and comply with the reporting requirements set forth in the last paragraph of Section V of this Order.

IT IS THEREFORE ORDERED that consent and approval are hereby granted for a program of common stock repurchases by Illinois Power Company from Illinova Corporation, an affiliated interest, as more fully described in Section I of this Order, provided, that the provisions set forth in Finding (5) of this Order shall be satisfied with respect to each common stock repurchase transaction.

IT IS FURTHER ORDERED that Illinois Power shall file the informational reports provided for in Finding (5) of this Order.

IT IS FURTHER ORDERED that the proposed accounting treatment for the common stock repurchase transactions, as set forth in Section I of this Order, is hereby approved.

IT IS FURTHER ORDERED that Staff shall comply with the requirements of Finding (7) of this Order.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By order of the Commission this 22nd day of March, 1995.

(SIGNED) DAN MILLER

Chairman

(S E A L)

Commissioner Kretschmer dissents; a written opinion will be filed.

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION
CERTIFICATE

Re: 94-0518

I, DONNA M. CATON, do hereby certify that I am Chief Clerk of the Illinois Commerce Commission of the State of Illinois and keeper of the records and seal of said Commission with respect to all matters except those governed by Chapters 18a and 18c of The Illinois Vehicle Code.

I further certify that the above and foregoing is a true, correct and complete copy of order made and entered of record by said Commission on March 22, 1995.

Given under my hand and seal of said Illinois Commerce Commission at Springfield, Illinois, on March 24, 1995.

Donna M. Caton
Chief Clerk

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Power Company :
: Docket No. 94-0518
Application for an order determining :
that prior approval of a common stock :
repurchase program is not required :
under Section 7-101 of the Public :
Utilities Act, or in the alternative :
consenting to and approving the common :
stock repurchase program.

April 5, 1995, Dissenting Opinion filed by Commissioner Ruth K. Kretschmer to the Order entered by the Commission on March 22, 1995.

Commissioner Kretschmer Dissenting:

In approving Illinois Power Co.'s (IP) repurchase program, the Majority has: i) forced IP's ratepayers to subsidize Illinova's shareholders; ii) exposed IP to increased liquidity risk; and iii) allowed a regulated utility to give cash to its unregulated holding company in exchange for worthless stock.

The Majority assumes that Illinova Generating Co.'s (IG) stock is worth only its book value (i.e., that it contributes nothing to Illinova's market value). They also assume that Illinova's other holdings contribute nothing to Illinova's current market value. If IG or Illinova's other holdings make any positive contribution to Illinova's market value, then IP will pay an excessive price for its own stock. This will result in IP's ratepayers subsidizing Illinova's shareholders.

It is highly unlikely that the Majority's assumptions are true. If IG and the other holdings contribute nothing to Illinova's market value, then IP would be the only positive contributor to Illinova's market value. However, if this is true, why would Illinova move money from its only value-added sector (IP) over to IG and Illinova's other holdings -- who are under-performing? Either Illinova's management does not know how to maximize its shareholder value, or else IP's ratepayers are subsidizing Illinova's shareholders. I believe the latter is true.

The Majority also allows IP to expose its ratepayers to increased liquidity risk without receiving any off-setting benefit. Under the Order, IP will reduce its cash holdings in

exchange for its treasury stock. However, IP's stock is not publicly traded, and Illinova is the only shareholder of IP's stock; hence there is no real market for IP's stock. Because the value of the stock that IP repurchases from Illinova will be limited to whatever Illinova is willing to pay IP for it, IP and its ratepayers are at the mercy of Illinova. While IP is not technically required to sell the stock to Illinova, there can be no other buyers. As a result, IP can either accept whatever price Illinova is willing to pay -- or hold onto worthless paper.

Hence, under this Order, the Majority has allowed a regulated company to give cash to its unregulated holding company in exchange for stock that has no available market. So, while the Order requires IP to pay Illinova an excessive price for its treasury stock,¹ the Order permits Illinova to repurchase the stock at whatever price Illinova is willing to pay. In short, the Order favors Illinova's shareholders to the detriment of IP's ratepayers.

For these reasons, I respectfully dissent."

¹ As noted above, this will be the case if IG or Illinova's other holdings make some contributions to Illinova's market price.

Illinois Power Company
500 South 27th Street
P.O. Box 511
Decatur, IL 62525-1605
Tel 217 424-7152

Larry D. Haab
Chairman, President
and Chief Executive Officer

**ILLINOIS
POWER**

December 20, 1995

Mr. Dan Miller
Chairman
Illinois Commerce Commission
527 East Capitol Avenue
P. O. box 19280
Springfield, Illinois 62794-9280

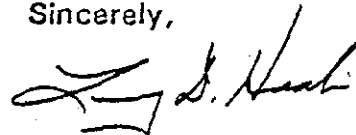
Dear Chairman Miller:

I am responding to comments by the Commission in its pre-bench session on Tuesday, December 19, 1995, regarding the letter to the SEC. During that discussion, there was some concern about the cash flow test and reporting requirements once our first mortgage bonds became rated single A, as ordered in Docket No. 94-0518.

We believe that the current cash flow test is suitable for the conditions that now exist. However, we also believe that as conditions change that particular cash flow test may not continue to be appropriate. In particular, we do not expect our bond rating to raise to single A in the near future, and during that time our financial position and the position of the utility industry in general will likely be much different.

Therefore, we propose that in response to the Commission's concern, we will commit to be subject to the cash flow test for the next two years, even if our first mortgage bond ratings rise to single A within that period. Further, after that period and once Illinois Power becomes a single A utility, we will provide on an ongoing basis, our quarterly statement of cash flows. Also, if the Commission determines at that time that its needs are not being met, we will work with the Staff to develop other specific information as deemed appropriate, given the circumstances that exist.

Sincerely,



Larry D. Haab